MBf Holdings Bhd & Anor v Houng Hai Kong & Ors

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO S4–22–75–1993
ANUAR J
2 JUNE 1993

Civil Procedure *— Contempt of court — Motion for contempt — Alleged disobedience of court order — Objection as to jurisdiction of court to deal with contempt — Power and jurisdiction of court to punish persons who scandalize it or disobey orders made by it — Juridical basis for law of contempt — Courts of Judicature Act 1964 ss 13(2) & 25 — Federal Constitution arts 10, 126 & 162 — Rules of the High Court 1980 O 45 r 5(1)(b) & O 52*

Constitutional Law *— Fundamental liberties — Freedom of speech and expression — Power and jurisdiction of court to issue order restraining defendants from publishing allegations of impropriety, irregularity and illegality against plaintiffs — Whether order a restriction on freedom of speech or expression — Failure to comply with court order — Damage and injury caused to plaintiffs — Contempt of court — Federal Constitution arts 10, 126 & 162*

English Law *— Contempt jurisdiction — Common law of England confers on all courts of record the power to punish persons who acted in contempt of them — Application of common law in Malaysia — Common law forming part of 'existing laws' and remaining in force in Malaysia — Civil Law Act 1956 s 3 — Courts of Judicature Act 1964 ss 13(2) & 25 — Federal Constitution art 162*

On 9 February 1993 the plaintiff obtained an ex parte interlocutory injunction ('the order') restraining the defendants from doing certain acts, including printing, circulating, distributing or publishing any allegation of impropriety, irregularity and illegality against the plaintiffs or their subsidiaries and affiliated companies. On 23 February 1993, the plaintiffs obtained ex parte leave from the High Court to issue a motion for contempt against the defendants for their alleged disobedience of the order. The plaintiffs' substantive motion to commit the defendants for contempt was filed on 25 February 1993. At the commencement of the hearing of contempt proceedings on 27 and 28 May 1993, the defendants took a preliminary objection as to jurisdiction based on constitutional grounds. The defendants contended that the subject matter before the court involved the right to freedom of speech and expression which is enshrined under art 10 of the Federal Constitution and that the court had no jurisdiction or power to prevent the defendants from exercising their rights to freedom of speech and expression. Further, only Parliament had the power to provide law against contempt of court and as Parliament had not done so, there was no law conferring jurisdiction upon the High Court to punish for contempt.

Held, dismissing the defendants' preliminary objection:

(1) The law of contempt under art 10(2) of the Federal Constitution is limited to matters directly involving the rights of freedom of speech and expression under art 10(1)(a). It does not extend to other instances of contempt of court. In the present case the contempt proceeding was not a contempt proceeding in respect of restriction on freedom of speech or expression, but it was a contempt proceeding taken against the defendants for having disobeyed the order of court restraining them from doing certain acts. While the order of the court stood unvaried, the defendants were bound to comply with its terms and failure to obey such an order was a contempt of court.

(2) Reading s 25 of the Courts of Judicature Act 1964, all powers which were vested in the courts in the exercise of its jurisdiction prior to Malaysia Day became vested in the court after Malaysia Day. Therefore the jurisdiction vested in the court to hear contempt proceedings before Malaysia Day would also continue to be vested in the court after Malaysia Day.

(3) Under art 162(1) of the Federal Constitution, common law comes within the meaning of 'existing laws' and therefore until it is repealed by the authority it continues to be enforced after Merdeka Day. Under common law the court has the power to restrain anyone from publishing, unless with just cause, something which is or which is likely to cause damage or injury to other people. It was within the jurisdiction and powers of the court to issue the order restraining the defendants. The Courts of Judicature Act 1964, which is a law made by Parliament after Merdeka, did not remove the jurisdiction and powers of the court to apply common law in this country. Consequently, common law remains in force and continues to form part of the law of Malaysia. The courts of common law without the aid of any authorizing provision had inherent jurisdiction to prevent abuse of their process and to punish for contempt.

Per curiam:

(1) It is paramount in the public interest that every court should have power and authority or jurisdiction to punish persons who scandalize it or disobey orders made by it. If such power is absent, then the public will lose all confidence in the authority of the judicial arm of the state leading to anarchy and disorder.

(2) The fact that the power reserved to Parliament to enact a specific law to deal with contempt of court has not been exercised by it does not leave the High Court bereft of any authority or jurisdiction to exercise the specific powers conferred upon it by art 126 of the Federal Constitution and s 13 of the Courts of Judicature Act 1964 to deal with contempt.

[Bahasa Malaysia summary

Pada 9 Februari 1993, plaintif telah memperolehi satu injunksi interlokutori ex parte ('perintah itu') untuk menyekat defendan daripada membuat tindakan-tindakan yang tertentu, termasuk mencetak, menyebar, mengedar atau menerbitkan sebarang dakwaan tindakan yang tidak berpatutan, salah aturan dan penyalahan undang-undang terhadap plaintif atau anak syarikat mereka dan syarikat-syarikat yang bersangkutan dengan mereka. Pada 23 Februari 1993, plaintif memperolehi kebenaran ex parte daripada Mahkamah Tinggi untuk mengeluarkan satu usul untuk penghinaan terhadap defendan akibat ketidakpatuhan mereka akan perintah itu. Usul substantif plaintif untuk pemenjaraan defendan untuk penghinaan telah difailkan pada 25 Februari 1993. Di permulaan pendengaran prosiding penghinaan pada 27 dan 28 Mei 1993, defendan telah membuat bantahan permulaan berkenaan dengan bidang kuasa berdasarkan alasan-alasan perlembagaan. Defendan berhujah bahawa bahan perkara di hadapan mahkamah meliputi kebebasan bercakap dan menyuarakan perasaan yang termaktub di dalam perkara 10 Perlembagaan Persekutuan dan bahawa mahkamah tidak mempunyai bidang kuasa atau kuasa untuk menghalang defendan daripada menjalankan hak mereka kepada kebebasan bercakap dan menyuarakan perasaan. Seterusnya, cuma Parlimen yang mempunyai kuasa untuk memperuntukkan undang-undang terhadap penghinaan mahkamah dan oleh kerana Parlimen tidak berbuat demikian, tidaklah ada undang-undang yang memberikan bidang kuasa kepada Mahkamah Tinggi untuk mengarahkan hukuman terhadap penghinaan.

Diputuskan, menolak bantahan permulaan defendan itu:

(1) Undang-undang berkenaan penghinaan di bawah perkara 10(2) Perlembagaan Persekutuan adalah terhad kepada perkara-perkara yang menyentuh secara terus hak kebebasan bercakap dan menyuarakan perasaan di bawah perkara 10(1)(a). Ianya tidak merangkumi kes-kes penghinaan mahkamah yang lain. Dalam kes ini, prosiding penghinaan itu bukanlah satu prosiding penghinaan berkenaan dengan penyekatan kebebasan bercakap dan menyuarakan perasaan, tetapi ianya adalah satu prosiding penghinaan yang dimulakan terhadap defendan kerana tidak mematuhi perintah mahkamah menyekat mereka daripada membuat tindakan-tindakan yang tertentu. Semasa perintah mahkamah masih tidak diubah, defendan terpaksa mematuhi syarat-syaratnya dan kegagalan mematuhi perintah sedemikian adalah satu penghinaan mahkamah.

(2) Membaca s 25 Akta Mahkamah Kehakiman 1964, kesemua kuasa yang diletakhak pada mahkamah untuk menjalankan bidang kuasanya sebelum Hari Malaysia adalah terletakhak kepada mahkamah selepas Hari Malaysia. Oleh itu bidang kuasa yang diletakhak pada mahkamah untuk mendengar prosiding penghinaan sebelum Hari Malaysia akan terus terletakhak pada mahkamah selepas Hari Malaysia.

(3) Di bawah perkara 162(1) Perlembagaan Persekutuan, 'common law' adalah diliputi di dalam makna 'existing laws ' dan oleh itu sehingga ianya dimansuhkan oleh pihak berkuasa, ia terus dikuatkuasakan selepas Hari Malaysia. Di bawah 'common law' mahkamah mempunyai kuasa menyekat sebarang orang daripada menerbitkan, melainkan dengan sebab yang berpatutan, sesuatu yang boleh atau yang mungkin boleh mengakibatkan kerosakan atau kecederaan kepada orang lain. Pengeluaran perintah menyekat defendan adalah termasuk di dalam bidang kuasa dan kuasa mahkamah. Akta Mahkamah Kehakiman 1964 yang merupakan satu undang-undang yang dibuat oleh Parlimen selepas Hari Kemerdekaan tidak mengetepikan bidang kuasa dan kuasa mahkamah untuk memakai 'common law' di dalam negara ini. Lantaran itu, 'common law' masih berkuatkuasa dan terus membentuk sebahagian daripada undang-undang Malaysia. Mahkamah-mahkamah 'common law' tanpa bantuan sebarang peruntukan yang memberi kuasa mempunyai bidang kuasa sedia ada untuk menyekat penyalahgunaan proses mereka dan untuk menghukum penghinaan.

Per curiam:

(1) Adalah paling penting demi kebaikan awam bahawa setiap mahkamah harus mempunyai kuasa atau bidang kuasa untuk menghukum orang-orang yang menghinanya atau yang tidak mematuhi perintah yang dibuatnya. Jika kuasa sedemikian tidak wujud, maka golongan awam akan kehilangan segala kepercayaan dalam kuasa bidang kehakiman negara dan ini akan membawa kepada darurat dan ketiadaan aturan.

(2) Hakikat bahawa kuasa yang diberikan kepada Parlimen untuk membuat satu undang-undang yang spesifik untuk mengawal penghinaan mahkamah tidak dijalankan olehnya tidak meninggalkan Mahkamah Tinggi tanpa sebarang kuasa atau bidang kuasa untuk menjalankan kuasa-kuasa yang spesifik yang diberikan kepadanya oleh perkara 126 Perlembagaan Persekutuan dan s 13 Akta Mahkamah Kehakiman 1964 untuk mengawal penghinaan.]

[*Editorial Note*: The defendants have appealed to the Supreme Court vide Civil Appeal No 02–385–93.]

Notes

For cases on contempt of court, see 2 *Mallal's Digest* (4th Ed) paras 554–585.

For cases on freedom of speech and expression, see 3 *Mallal's Digest* (4th Ed) paras 562–573.

Cases referred to

1 *Attorney General v British Broadcasting Corporation* [1980] 3 WLR 109; [1980] 3 All ER 161; [1981] AC 303 (refd)

2 *Datuk Hong Kim Sui v Tiu Shi Kian & Anor* [1987] 1 MLJ 345 (folld)

3 *Lee Lee Cheng v Seow Peng Kwang* [1960] MLJ 1 (refd)
4 *Attorney General v Times Newspapers Ltd* [1974] AC 273; [1973] 3 All ER 54; [1973] 3 WLR 298 (refd)
5 *Packer v Peacock* (1912) 13 CLR 577 (refd)
6 *Re Gerson; Re Nightingale* [1946] SCR 538 (refd)
7 *Canadian Broadcasting Corporation & Ors v Cordeau & Ors* 101 DLR (3d) 24 (refd)
8 *R v Forbes; ex p Bevan* (1972) 127 CLR 1 (refd)
9 *Arthur Lee Meng Kuang v Faber Merlin Malaysia Bhd & Ors* [1986] 1 MLJ 193 (refd)
10 *Lee Kuan Yew v Chin Vui Khen & Anor* [1991] 3 MLJ 494 (refd)
11 *PP v Dato' Yap Peng* [1987] 2 MLJ 311 (refd)
12 *Liyanage v R* [1967] 1 AC 259; [1966] 1 All ER 650; [1966] 2 WLR 682 (refd)

Legislation referred to
Civil Law Act 1956 s 3
Courts of Judicature Act 1964 ss 13(2), 25
Federal Constitution arts 10, 126, 162
Rules of the High Court 1980 O 45 r 5(1)(b), O 52

G Sri Ram (*David Morais* and *SC Loh* with him) (*Cheang & Ariff*) for the plaintiffs.
Karpal Singh (*Karpal Singh & Co*) for the first and second defendants.
Dato' Dominic Puthucheary and *Lim Kean Chye* (*Wee Choo Keong & Faaiz*) for the third defendant.

Anuar J: On 9 February 1993 I granted the plaintiffs in this action an ex parte interlocutory injunction restraining the defendants from doing certain acts, including printing, circulating, distributing or publishing any allegation of impropriety, irregularity and illegality against the plaintiffs or their subsidiaries and affiliated companies. The plaintiffs, on 23 February 1993, obtained ex parte leave before me to issue a motion for contempt against the defendants for their alleged disobedience of the order in question.

On 20 February 1993, the defendants filed an application to set aside the injunction. Later, on 25 February 1993, the plaintiffs filed their substantive motion to commit the defendants for contempt. In an earlier ruling which I made on 23 March 1993, I held that the plaintiffs' motion for contempt ought to be heard first. The defendants' appeal against my decision to the Supreme Court was heard on 28 April 1993. In a written judgment delivered on 8 May 1993, the Supreme Court dismissed the appeals by the defendants against my decision. Consequently, I fixed the motion for hearing on 27 and 28 May 1993.

The hearing on 27 and 28 May in respect of notice of motion (encl 27) filed by the plaintiffs for an order that the first defendant, second defendant and third defendant be committed to prison for their several contempt of this honourable court. The allegation of contempt is that the first defendant, second defendant and third defendant have disobeyed or refused to obey the order of this court dated 9 February 1993.

The defendants have, at the commencement of the hearing of the motion, taken an objection as to jurisdiction based on constitutional grounds.

A To my mind the preliminary objection is unnecessary. However, I heard argument on the points raised on 27 and 28 May 1993 and reserved judgment to today.

The argument of the defendants is primarily based on art 10 of the Constitution. Article 10 of the Federal Constitution deals with freedom of
B speech and expression; the following are the relevant provisions:

> 10(1) Subject to Clauses (2), (3) and (4) —
>
> (a) every citizen has the right to freedom of speech and expression;
> (b) ...
> (c) ...
>
> C (2) Parliament may by law impose —
>
> (a) on the rights conferred by paragraph (a) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the
> D privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence.

The defendants contend that any law which restricts the rights conferred by cl (1) can only be made by Parliament. Furthermore, only Parliament has the power to provide law against contempt of court.

E It is the defendants' case that Parliament has not passed any law in the nature of a Contempt of Courts Act (such as those as are in legislative existence in India and the United Kingdom) so that there is no law conferring jurisdiction upon the High Court to punish for contempt.

The objection raises important questions relating to preservation of freedom of speech and prevention of contempt of court. Undoubtedly these
F are difficult to reconcile with each other. It was urged upon the court that only Parliament may provide for the law of contempt. That exclusive right cannot be given to any other body including the courts. Otherwise the scope of contempt of court would be unnecessarily extended and accordingly freedom of speech and expression would be unnecessarily contracted (see
G *Attorney General v British Broadcasting Corporation*[1] at p 119).

It is argued that the law of contempt under art 10 of the Constitution encompasses a very wide field. Article 10 envisages all manner of contempt of court.

I must make it plain here that I do not agree with the contention that all contempt of court must come under the provision of art 10. In my view the
H law of contempt under art 10(2) is limited to matters directly involving the rights of freedom of speech and expression under art 10(1)(a). It does not extend to other instances of contempt of court.

The Rules of the High Court 1980, and in particular O 52 thereof, so the argument goes, is a mere procedural vehicle that confers no jurisdiction
I upon me to punish any person who scandalizes the court or with impunity disobeys any order that I may issue against him.

The defendants contend that the subject matter before the court involves the right to freedom of speech and expression which is enshrined under art 10 of the Constitution. It is the right of every citizen and in particular,

Member of Parliament, to have the freedom of speech and expression where matters of public interest is involved. It is submitted that in this case a matter of public interest and importance is in issue. The defendants therefore have a right to have the freedom to speak out against any mismanagement or conspiracy in the plaintiffs' company. It is said that the court has no jurisdiction or power to prevent the defendants from exercising their rights to freedom of speech and expression.

With respect I think the defendants have missed the point. The case before me is an application to commit the defendants to prison for their part in disobeying the order of court. The contempt proceeding therefore is not a contempt proceeding in respect of restriction on freedom of speech or expression, it is a contempt proceeding taken against the defendants for having disobeyed the order of court restraining them from doing certain acts. The order of injunction dated 9 February 1993 is as follows:

> It is ordered and directed that an injunction do issue until further order to restrain the defendants and each of them by themselves, their servants or agents or otherwise howsoever from printing, circulating, distributing or publishing in any manner whatsoever any allegation of impropriety or irregularity or illegality of whatsoever nature against the first plaintiff or the second plaintiff or any of their respective subsidiaries or affiliates more particularly identified in the annexure attached hereto or of any of their officers and it is further ordered that the costs of this application be paid by the defendants.

There is prima facie evidence that the defendants failed to comply with the court's order. Failure to obey a court's order is a contempt of court. Under O 45 r 5(1)(b) it is provided that where a person disobeys a judgment or order requiring him to abstain from doing an act, then the judgment or order may be enforced, with the leave of the court, by an order for committal. The relevant provision of O 45 r 5(1)(b)(i) reads as follows:

> (1) Where —
>
> (a) ...
> (b) a person disobeys a judgment or order requiring him to abstain from doing an act,
>
> then, subject to the provisions of these rules, the judgment or order may be enforced by one or more of the following means, that is to say —
>
> (i) with the leave of the Court, an order of committal.

In the case of *Datuk Hong Kim Sui v Tiu Shi Kian & Anor*,[2] it was held that while the order of the court stood unvaried, the defendants are bound to comply with its terms. The defendants therefore are subject to the committal process in terms of O 45 r 5(1)(b)(i).

The defendants further contend that art 126 of the Federal Constitution and s 13(2) of the Courts of Judicature Act 1964, do not confer jurisdiction on the court to hear any proceeding of contempt of court.

These two provisions are set out below:

> Article 126 —
>
> The Supreme Court or a High Court shall have power to punish any contempt of itself.

A Section 13(2) —

The High Court shall have power to punish any contempt of itself.

It is submitted that the two provisions merely give the court *power* to punish any contempt of itself but do not confer the requisite jurisdiction.

B If that was so it would appear to me that any order given by the court can be disregarded and disobeyed with impunity, the court having no power to deal with such offenders. To my mind that cannot be the case.

Prior to Merdeka Day, the court has always had the power to deal with proceeding for contempt of court. This power admittedly is derived from the common law of England. Even after Merdeka the court has been C exercising the same power without any objection to its jurisdiction. The present case, I believe, is the first of its kind in which the jurisdiction of the court is being challenged in respect of proceeding of contempt of court.

It is submitted by learned counsel for the defendants that after Merdeka the court no longer enjoys the same jurisdiction in respect of proceeding for D contempt of court as it has done before Merdeka.

The jurisdiction of the court is now governed by s 25 of the Courts of Judicature Act 1964. Section 25 of the Courts of Judicature Act 1964 reads:

(1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which E were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.

(2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:

Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

F It is clear, reading s 25 above, that all the powers which were vested in the courts in the exercise of its jurisdiction prior to Malaysia Day became vested in the court after Malaysia Day. This clearly means that jurisdiction vested in the court prior to Malaysia Day continues to be exercised by the court after Malaysia Day. It follows therefore that the jurisdiction vested in G the court to hear contempt proceeding before Malaysia Day will also continue to be vested in the court after Malaysia Day.

The defendants, however, contend that the jurisdiction and power of the court under s 25 of the Courts of Judicature Act must be subject to art 162 of the Federal Constitution. Under art 162 of the Constitution the existing H law shall only continue after Merdeka Day with modifications as may be made therein. Article 162(1) reads:

Subject to the following provisions of this Article and Article 163, the existing laws shall, until repealed by the authority having power to do so under this Constitution, continue in force on and after Merdeka Day, with such modifications as may be made therein under this Article and subject to any amendments made I by federal or State law.

It is argued that 'existing laws' do not include the common law of England. It is therefore argued that the article does not give the common law any more status than what is given to s 3 of the Civil Law Act 1956.

It is submitted that the application of the common law of England is merely an application of precedence in the process of judicial decision making. It does not create rights or liabilities as such. Therefore the common law rules are to be regarded as valid for that purpose only. A

With respect I do not agree with the learned counsel's interpretation of art 162. The common law is not a mere precedence for the purposes of making a judicial decision. The common law is a substantive law which has the same force and effect as written law. It has been accepted in this country and is recognized as a binding authority. It is therefore not true to say that under art 162 the common law no longer exists. I am of the view that under art 162 the common law comes within the meaning of 'existing law' and therefore until it is repealed by the authority it continues to be enforced after Merdeka Day. B C

It is further argued that under art 162(6) of the Constitution, the court, when applying the provision of any existing law shall do so with such modifications as may be necessary to bring it into accord with the provisions of the Constitution. It is submitted therefore that art 162(6) requires the court to modify the existing laws, ie the common law, to bring it into accord with the provisions of the Constitution, ie art 10. The argument is that all laws within the definition of 'existing laws' would be subject to the express provision of art 10(1). D

With respect I am unable to accept that argument. I am of the view that under the common law the court has the power to restrain anyone from publishing, unless with just cause, something which is or which is likely to cause damage or injury to other people. E

In the case before us the plaintiffs alleged that the defendants have caused damage and injury to the business of the plaintiffs by the action of the defendants. In their application the plaintiffs have shown prima facie evidence to support the allegation. There was therefore good grounds for the court to issue the restraining order against the defendants to prevent them from further causing damage and injury to the plaintiffs pending the trial of the case. It is to be noted that the restraining order is not intended to prevent the defendants from publishing the matter but merely to postpone it. F G

I am therefore of the view that the order issued by the court restraining the defendants is within the jurisdiction and powers of the court to do so.

It would be misleading to say that the common law overrides the statute law. Rather, the common law is to be regarded as complementary to the written law. It exists side by side with the written law where no law has been enacted by Parliament. H

I am sure that Parliament is aware that the common law exists before Merdeka. It would be a very simple matter for the Parliament to remove the common law from the judicial system if Parliament so desires. The fact that Parliament, in its wisdom, never thought it necessary to take any positive step to remove the common law from our legal concept lends support to my view that the common law continues to exist after Merdeka. I

It is to be noted that the Courts of Judicature Act 1964, which is a law made by Parliament after Merdeka, did not remove the jurisdiction and

powers of the court to apply the common law in this country. It seems certain to me that Parliament did not consider it wise to abandon the principle of the common law altogether from our legal system. Consequently, the common law remains in force and continues to form part of the law of Malaysia.

I also found it necessary to issue the restraining order although the result may be drastic against the defendants. I am fortified in this view by the speech of Lord Scarman in the case of *Attorney General v British Broadcasting Corporation*[1] when he said at p 138:

> But the prior restraint of publication, though occasionally necessary in serious cases, is a drastic interference with freedom of speech and should only be ordered where there is a substantial risk of grave injustice.

It is with the view to prevent grave injustice from being done to the plaintiffs that the court issued the injunction against the defendants.

It is part of the defendants' argument that there is a distinction between the term 'jurisdiction' and 'power'. *Lee Lee Cheng v Seow Peng Kwang*[3] was cited in support of this argument. In that case, Thomson CJ (as he then was), said (at p 3 of the report):

> It is axiomatic that when different words are used in a statute they refer to different things and this is particularly so where the different words are, as here, used repeatedly. This leads to the view that in the Ordinance there is a distinction between the jurisdiction of a court and its powers, and this suggests that the word 'jurisdiction' is used to denote the types of subject matter which the court may deal with and in relation to which it may exercise its powers. It cannot exercise its powers in matters over which, by reason of their nature or by reason of extra-territoriality, it has no jurisdiction. On the other hand, in dealing with matters over which it has jurisdiction, it cannot exceed its powers.
>
> The same distinction between jurisdiction and powers is to be observed in s 46 which deals with criminal matters. The first subsection sets out by reference to the First Schedule to the Ordinance, which is of the same sort of structure as the Second Schedule, the original criminal jurisdiction of the court whereas it is the second subsection which gives it the power when exercising that jurisdiction to pass any sentence allowed by law.
>
> It is to be observed in passing that a similar distinction is to be found in the Judicature Act 1925 (and was to be found in the Act of 1873). Certain sections (eg 18, 20 and 21) relate in terms to the jurisdiction of the High Court. Others (eg 39 and 46) provide that the court 'shall have power'.
>
> The view that in the Ordinance jurisdiction is not synonymous with powers gains strength when the Ordinance is considered in the light of the 1948 Agreement.
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> Clause 77 of the agreement provides that the Supreme Court shall be a court of unlimited jurisdiction, that it shall consist of a High Court and a Court of Appeal and that its constitution, powers and procedure may be prescribed by Federal Ordinance. Clearly here 'jurisdiction' must mean something different from 'power'. Jurisdiction is unlimited. But unlimited jurisdiction cannot mean unlimited power because as regards the powers of the court it is provided that these may be prescribed by Federal Ordinance and in the nature of things something which is unlimited cannot be capable of being prescribed. This leads to the conclusion that the expression 'jurisdiction' is used as meaning the authority of the court to exercise any judicial power that is given to it by the law

and that when the clause says that jurisdiction is unlimited it means that there is authority to exercise such judicial power as is given by law in any type of matter whatsoever in which the law authorizes or requires judicial power to be exercised.

Mr Lim Kean Chye on behalf of the third defendant also drew my attention to paras 9 and 10 of the Schedule to the Courts of Judicature Act 1964. Those paragraphs read as follows:

9 Power to enforce judgment of the Court for the payment of money to any person or into Court by a writ, to be called a writ of seizure and sale, under which all the property, movable or immovable, of whatever description, of a judgment debtor may be seized, except property which is exempt from seizure and sale under any written law.

10 Power to enforce a judgment of the Court in any other manner which may be prescribed by any written law or rules of court.

It is Mr Lim's argument that the Courts of Judicature Act, by the foregoing paragraphs, recognizes only the enforcement of final judgments delivered on merit and not interlocutory or interim orders including ex parte order.

Historically speaking, the origins of the contempt jurisdiction may be traced to the common law of England by which all courts of record had the power to punish persons who acted in contempt of them. This power was principally exercised by the Court of King's Bench, the Court of Common Pleas and the Court of Exchequer. It was later also exercised by the Court of Chancery. In 1981, by the Contempt of Court Act passed in that year, the UK Parliament placed the law relating to contempt of court on a statutory footing.

It is paramount in the public interest that every court should have power and authority or jurisdiction to punish persons who scandalize it or disobey orders made by it. If such power is absent, then the public will lose all confidence in the authority of the judicial arm of the state leading to anarchy and disorder. This is the juridical basis for the law of contempt.

The importance of maintaining the authority of the court to ensure that law and order is observed was indicated with typical clarity by Lord Morris of Borth-y-Gest who said in *Attorney General v Times Newspapers Ltd*[1] at p 302:

My Lords, the phrase contempt of court is one which is compendious to include not only disobedience to orders of a court but also certain types of behaviour or varieties of publications in reference to proceedings before courts of law which overstep the bounds which liberty permits. In an ordered community courts are established for the pacific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperilled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognized courts of the land are so flouted that their authority wanes and is supplanted. But as the purpose and existence of courts of law is to preserve freedom within the law for all well disposed members of the community, it is manifest that the courts must never impose any limitations upon free speech or free discussion or free criticism

A beyond those which are absolutely necessary. When therefore a court has to consider the propriety of some conduct or speech or writing, decision will often depend upon whether one aspect of the public interest definitely outweighs another aspect of the public interest. Certain aspects of the public interest will be relevant in deciding and assessing whether there has been contempt of court. But this does not mean that if some conduct ought to be stigmatized as being B contempt of court it could receive absolution and be regarded as legitimate because it had been inspired by a desire to bring about a relief of some distress that was a matter of public sympathy and concern. There can be no such thing as a justifiable contempt of court.

An examination of the authorities shows that such a power is inherent in C every court without the necessity for any legislation upon the subject.

In *Packer v Peacock*[5] Griffith CJ put the matter in this way:

> The jurisdiction of the Supreme Court invoked in these cases was the jurisdiction which every superior court possesses to protect itself from any action tending to impair its capacity to administer impartial justice. Such action is called contempt of court, and it must be action affecting the court itself. Punishment for such D contempt, however, is not inflicted in order to vindicate the affronted dignity of the members of the court, whether judges or jurymen, but in the interests of the public in general, and in particular of suitors, whose right to obtain a hearing of their suit free from prejudice or bias might otherwise be imperilled.

Again, in *Re Gerson; Re Nightingale*[6] at p 539, Rinfret CJ (Canada) said:

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> The power to punish for contempt is inherent in courts of superior original jurisdiction, quite independent of enactment in codes or statutes relating to their disciplinary powers.

This statement of principle was approved by the Supreme Court of Canada in *Canadian Broadcasting Corporation & Ors v Cordeau & Ors*.[7]

F The phrase 'inherent jurisdiction' has been defined as 'the power which a court has simply because it is a court of a particular description. Thus the courts of the common law without the aid of any authorizing provision had inherent jurisdiction to prevent abuse of their process and to punish for contempt. Inherent jurisdiction is not something derived by implication G from statutory provisions conferring particular jurisdiction; if such a provision is to be considered as conferring more than is actually expressed that further jurisdiction is conferred by implication according to accepted standards of statutory construction and it would be inaccurate to describe it as "inherent jurisdiction", which, as the name indicates, requires no authorizing provision. Courts of unlimited jurisdiction have "inherent H jurisdiction"': per Menzies J in *R v Forbes*[8] at p 7.

Coming closer to home, the Supreme Court of Malaysia has, in *Arthur Lee Meng Kuang v Faber Merlin Malaysia Bhd & Ors*,[9] recognized that art 126 of the Federal Constitution and s 13 of the Courts of Judicature Act 1964 have conferred jurisdiction on the courts in this country to deal with I contempt.

It has been argued by the defendants that *Arthur Lee*'s case[9] is not binding on me because the Supreme Court was not addressed on the difference between powers and jurisdiction. Whilst the discussion may not

have taken place, it is plain that even without the aid of the decision in *Arthur Lee*,[9] the High Courts and Supreme Court of this country have ample jurisdiction, authority and power to punish for contempt of themselves. To hold otherwise would be an absurdity and would leave the courts vulnerable. Public policy demands that this should not happen.

In my judgment, for the purpose of the exercise of the contempt jurisdiction the distinction between civil and criminal contempt is irrelevant. As I have said earlier in this judgment, whether it be the scandalizing of a court or the wilful disobedience of its orders, makes no difference: in both circumstances, the administration of justice will not be served and public confidence in the judiciary will not be maintained unless punitive jurisdiction is available to those who exercise the judicial power of the state.

By reason of the conclusion that I have reached in the preceding passages in this judgment, I find that there is no merit in the elaborate argument that has been addressed to me on art 10 of the Constitution. The fact that the power reserved to Parliament to enact a specific law to deal with contempt of court has not been exercised by it does not leave the High Court bereft of any authority or jurisdiction to exercise the specific powers conferred upon it by art 126 of the Constitution and s 13 of the Courts of Judicature Act 1964.

I observe that a similar argument as that addressed to me has been advanced in connection with defamation in the case of *Lee Kuan Yew v Chin Vui Khen & Anor*[10] and rejected. Whilst I am not in a position to say that I wholly agree with all the reasons given in the judgment in that case for repelling the submissions made, I am entirely persuaded that the conclusion arrived at was correct. For that reason, I reject the defendants' submission that I ought not to follow the decision in that case.

I accept the submission made that there is a distinction between the jurisdiction of a court and its power. I am also of the view that I am bound by the observations made by the Court of Appeal in *Lee Lee Cheng*.[3]

Nevertheless, in the light of the conclusions I have arrived at upon the issue of jurisdiction, I find it unnecessary to deal with arguments addressed to me on the distinction between powers and jurisdiction.

In his final reply, Mr Lim Kean Chye appearing for the third defendant made what I would term, without any disrespect to the learned counsel, a rather sweeping submission to the effect that I was not even a court of law after the amendment to art 121 of the Constitution made in 1988. Contrary to Mr Lim's views, that amendment was not a result of what has been called by counsel as the judicial crisis that took place in that year. That amendment was the direct consequence of the decision in *PP v Dato' Yap Peng*.[11] By that amendment, the phrase 'judicial power' was removed from art 121 of the Constitution.

Mr Lim submits that the effect of this amendment is to deprive the courts of any judicial power and has reduced them to something akin to an administrative tribunal. Without going into the full breadth of the argument, I think that a complete answer to the submission made by counsel is to be found in the decision of the Privy Council in *Liyanage v R*[12] at p 287.

A For the reasons that I have set out in this judgment I dismiss the preliminary objection as to jurisdiction with costs. I also grant to the plaintiffs a certificate for two counsel under the provisions of O 59.

Preliminary objection dismissed.

B Reported by Yap Foo Ken

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